19

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No.244/2006

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellants Plaintiffs

1. Smt. Kuntala Mahanti, W/o Late Ram Narayan Mahanti, Aged about 41 years,
2. Ramesh @ Rinku S/o Late Ram Narayan Mahanti, Aged about 20 years,

Both are the R/o Bhagat Singh Ward, Jagdalpur, District Bastar (C.G.)

Versus

Respondents Defendants

1. Asha Kiran Mahanti, D/o Unknown, Aged about 37 years
2. Shri Akash Ratna Mahanti, S/o late Ram Narayan Mahanti, Aged about 19 years,
3. Shri Abash Ratna Mahanti, S/o late Ram Narayan Mahanti, Aged about 16 years,
4. Shri Vibash Ratna Mahanti, S/o late Ram Narayan Mahanti, Aged about 14 years,

From 3 to 4 are the minor through their mother Smt. Asha Kiran Mahanti.
All are the R/o Pathraguda Ward, Behind Primary School Kosa Kendra, (Behind B.R.Bhawan) Jagdalpur, Distt. Bastar (C.G.)

5. Shri Gopi Nath Mahanti, S/o unknown, Aged about 66 years, R/o Civil Line, Jagdalpur (C.G.) **[Died]**
6. Up Sanchalak,
   Panchayat evam Samaj Sewa Vibhag, Bastar, Jagdalpur (C.G.)

Second Appeal under Section 100 of the Code of Civil Procedure, 1908

Present:-
Shri Sanjay Patel, counsel for the appellants.

ORAL ORDER
(Passed on 05th November, 2007)

Heard on admission.

(2) The appellants are being aggrieved by an order dated 09-05-2006 passed by the Ist Additional District Judge, Bastar at Jagdalpur in Civil

Appeal No.11-A/2004 whereby the order dated 25-11-2003 passed by the 2nd Civil Judge Class II, Bastar at Jagdalpur in Civil Suit No.50-A/2002 dismissing the plaintiffs' suit, was affirmed.

(3) Brief facts are that one Ram Narayan Mahanti died on 28-03-1998. The appellants/plaintiffs as also the respondents/defendants claimed the retiral dues of Ram Narayan Mahanti from the Up Sanchalak, Panchayat evam Samaj Sewa Vibhag, Bastar at Jagdalpur. By a letter dated 15-04-1998 the appellant/plaintiff No.1and the respondent/defendant No.1 Smt. Asha Kiran Mahanti were directed to get succession certificate from the competent Court. The appellants/plaintiffs filled an application (Succession Case No.08/98) before the Civil Judge Class-I, Jagdalpur under Section 372 of Indian Succession Act. The application was dismissed on the ground that Smt. Kuntala Mahanti was not the legally married wife of Ram Narayan Mahanti. The succession certificate was ordered to be issued in favour of the respondent/defendant No.1 Smt. Asha Kiran Mahanti. Being aggrieved, the appellant/plaintiff No.1 Smt. Kuntala Mahanti preferred an appeal (No.04/2001) before the District Judge, Bastar at Jagdalpur which was also dismissed on 29-06-2002.

(4) Aggrieved by the concurrent dismissal of his application and the appeal, the appellants/plaintiffs instituted civil suit No.50-A/2002 before the 2nd Civil Judge Class II, Jagdalpur on 25-07-2002. An objection was raised by the respondents/defendants that mere suit for declaration of title was not maintainable. However, the trial Court in para-20 of the order dated 25-11-2003 considered the question of limitation and held that the cause of action first accrued to the appellants/plaintiffs herein on the death of Ram Narayan Mahanti for institution of Civil Suit and therefore, civil suit filed on

25-07-2002 was barred by limitation under Section 58 of the Limitation Act, 1963.

(5) Aggrieved by the said order, the appellants/plaintiffs preferred First Appeal No.11-A/2004 before the Ist Additional District Judge, Jagdalpur. The learned First Additional District Judge, Jagdalpur vide order dated 09-05-2006 dismissed the appeal while agreeing with the trial Court.

(6) Shri Sanjay Patel, learned counsel for the appellants/plaintiffs has placed reliance on ***Bharat Singh vs. Kunwar Singh and another*** **AIR 1991 Madhya Pradesh 368** for the proposition that that a mere denial by the defendants of the rights of the plaintiffs would not set the period of limitation running against them since there was no unequivocal threat to the plaintiffs right and no clear or unequivocal assertion of a right by the respondent/defendant No.1 on the other hand. It was urged that the period of limitation under Article 58 of the Limitation Act, 1963 starts to run from the date of the appellate Court judgment dated 29-06-2002 in Appeal No.04/2001. Therefore, the civil suit having been instituted on 25-07-2002 was within limitation. Reliance was also placed on ***Rakshmaniben vs. Vadilal Narayandas Jadawala & another*** **Current Civil Cases-1994 Volume-1-205** in support of the above submission.

(7) Having heard learned counsel for the appellants, I have perused the record.

(8) Article 58 of the Limitation Act, 1963 reads as under:-

Description of suit	Period of limitation	Time from which period begins to run
To Obtain any other declaration.	Three years.	When the right to sue first accrues.

The word "First" is very important. Therefore, the question would be when the right to sue can be said to have first accrued to the appellants/plaintiffs.

(9) It is well settled that a right to sue first accrues when there is a positive overt act on the part of the defendants asserting a clear right over the property claimed by the plaintiffs. An overt act on the part of the defendants which infringes or creates an unequivocal threat to infringe the right of the plaintiff would be the date on which the cause of action can be said to have first accrued to the plaintiff. In the present case, Ram Narayan Mahanti died on 28-03-1998. Both the appellant/plaintiff No.1 and respondent/defendant No.1 moved an application before the respondent No.6 herein claiming the retiral benefits of Ram Narayan Mahanti. In this manner, there was a clear assertion of right by the respondent/defendant No.1 over the retiral benefits of Ram Narayan Mahanti prior to the filing of application under Section 372 of Indian Succession Act before the 2nd Civil Judge Class I, Jagdalpur.

(10) In this view of the matter, the right to sue first accrued to the appellant/plaintiff on the date when the respondent/defendant No.1 asserted her right by claiming the retiral benefits before the respondent No.6 herein as widow of Ram Narayan Mahanti. In this view of the matter, civil suit filed by the appellant/plaintiff on 25-07-2002 i.e. beyond the period of 3 years from the date on which the right first accrued in favour of appellant/plaintiff was barred by limitation.

(11) In the light of aforesaid discussion, I am of the considered opinion that both the Courts below were right in holding that the suit was barred by limitation under article 58 of the limitation Act, 1963.

(12) In the result, this appeal being devoid of any merit fails and is dismissed at the stage of admission.

(13) M.(C.)P.No.933 of 2006 which is an application under Order 39 Rule 1 & 2 of C.P.C. for grant of injunction/status quo also stands dismissed.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Tumane